

Business & Employment Brief

Your Legal Team for Life

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Employment Status—Two Recent Cases Reviewed

The Supreme Court has held that 20 car valeters who signed contracts stating that they were self employed were actually employees and were therefore entitled to the minimum wage and holiday pay.

The valeters were aware of the implications of self employment before they signed the contracts, paid their own tax and had to purchase insurance and uniforms. The contracts stated that they were under no obligation to attend work and that they were entitled to send a substitute contractor in their place if they could not make it.

The Court held that they were employees because

the contracts were a sham. The reality was that they had to turn up and had to provide services personally. The contract was not therefore representative of the reality. In another case, a partner in a solicitor's firm who was entitled to a "guaranteed profit share" of £55,000 plus one eighteenth of the net profits of the firm was held to be an employee. Although each case will depend upon its facts, it was found to be relevant in the present case that the solicitor had no capital stake in the firm and was not liable for any losses that the firm might incur in the normal course of business. The full equity partners also exercised a significant degree of control over him.

Care In The Community

It has been held that employees in a care home run by Nottinghamshire Healthcare NHS Trust did not transfer automatically when residents were moved to their own flats and were cared for by two new independent care providers.

Their employment would have transferred if there had been a transfer of an economic entity that retained its identity or if there had been a change in the service provider.

The activities carried out by the new providers were not fundamentally or essentially the same in that residents were to be given more autonomy re domestic tasks and as such full staffing was not required.

The Trust was therefore liable to the employees it was obliged to retain (e.g. in relation to re-deployment or redundancy and associated costs).

Wage Cutting Proposals

An employee who refused a 5% pay cut was fairly dismissed after his 76 colleagues accepted the cut.

The business needed to boost profits and consulted the workforce on the cuts. The employee who refused to accept the cuts had his contract terminated and was then offered a new contract on a reduced salary.

The Tribunal initially allowed his claim on the basis that the 5% pay cut was not necessary to ensure the survival of the firm but this was overturned by the EAT who stated that this test had been rejected in previous decisions.

The matter was referred to a fresh Tribunal to consider the fairness of the dismissal taking into account the correct legal tests.

Kate Middleton on Employment Issues



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Good Credit Control Still Essential (especially when coming out of Recession)

Lauren Dimmack on
Commercial Matters



The faltering steps the economy is taking towards recovery are very welcome. However they seem to be breeding a degree of overconfidence on the part of some businesses, but this upswing is no reason to abandon good credit control practice. According to a recent report from Creditsafe, more than half of UK firms have suffered losses in the last year because they either neglected to do their homework on those with whom they were forming contracts or failed to attend to contract formalities. A minority also entered into contracts with customers who subsequently proved unable to pay for the goods or services provided to them.

Other recent surveys report that more than a quarter of businesses say they are experiencing cash-flow difficulties and nearly half admit to having worries about their ability to service their debts. At the same time, the indications are that both HM Revenue and Customs and the banks are taking a hard line with businesses experiencing financial problems.

The most dangerous phase in the credit cycle is when the economy is beginning to grow again. It is good business practice to ensure you take steps to minimise your credit risk.

Every business needs customers, but every customer, especially a new one, represents a risk to your business. It is a very serious issue but there are things you can do to make sure that you increase your chances of being paid.

Clearly, the precautions to be taken will depend on the credit given, but for a business with a gross profit margin of 25p in the pound, every pound of bad debt will immediately eat up the profit in the next three pounds worth of sales. Most businesses with bad debt problems do not follow these simple guidelines:

- Try not to give credit to people who don't deserve it. Trade references can be taken. Beware the company who keep a few trade accounts "sweet" and are a problem to the rest. Obtain a commer-

cial credit rating through a credit agency;

- Make sure the contract under which the sale is made protects you. In particular, make sure that there are clauses allowing you to charge interest at an unattractive rate from the time the debt goes overdue. Alternatively, offer attractive early settlement discounts. A company that does not take a five per cent discount for settling within a month is not showing good business sense. If they don't take it, why not?
- Make sure you have a suitable paper trail to prove you supplied what you say you did, when you did and that the customer agrees that it was satisfactory;
- If you can, incorporate a "reservation of title" clause in your conditions of sale. This may allow you to reclaim any goods for which payment has not been made, should the debtor's business fail or not make the requisite payment;
- Operate strict credit control. If a customer has overdue debts, do not give them more credit or carry out further work on their behalf, no matter how good the sob story! This is one of the cardinal errors of firms with bad debt problems. Document all contacts and enforce systematic collection procedures;
- Consider commercial credit insurance. Insuring one's debt book can be good business;
- If a debtor is becoming a problem, take advice as quickly as possible, before the problem spirals out of control;

Never suspend common sense. If you gain a new customer, does the explanation they give for switching to you really stack up? If not, be careful and keep the credit limit (if any) low. If you have contacts in their line of business, ask around. If practical, try to visit their business and establish if it looks orderly and well run. If you would like advice on this subject contact Lauren Dimmack on 01276 681217 or e-mail:

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